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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

**CHARLTON H. BONHAM, in his official
capacity as Director of the California
Department of Fish and Wildlife,**

Defendant,

and

**PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS and INSTITUTE
FOR FISHERIES RESOURCES,**

Intervenor-Defendants.

Case No. 3:17-cv-05685-MMC

**FOURTH POST-STAY JOINT STATUS
REPORT**

Judge: Hon. Maxine Chesney
Trial Date: None scheduled
Action Filed: October 3, 2017

Pursuant to the Court’s March 26, 2019 Order (Dkt. No. 72), Plaintiff Center for Biological Diversity (CBD), Defendant Charlton H. Bonham, in his official capacity as Director for the California Department of Fish and Wildlife, and Intervenor-Defendants Pacific Coast Federation of Fishermen’s Associations (PCFFA) and the Institute for Fisheries Resources (IFR) (collectively, the “Parties”) respectfully submit this *fourth post-stay* joint status report.

BACKGROUND

Plaintiff filed a complaint on October 3, 2017, alleging that Defendant has caused and is causing the “illegal ‘take’ of threatened and endangered humpback whales, endangered blue whales, and endangered Pacific leatherback sea turtles.” (Dkt. No. 1.) Plaintiff’s complaint challenges Defendant’s “authorization, permitting, licensing, overseeing, and management of the California commercial Dungeness crab fishery,” which Plaintiff alleges “is killing, injuring, harming, capturing, and otherwise causing ‘take’ of humpback whales, blue whales, and leatherback sea turtles in violation of” Section 9 of the Endangered Species Act. *Id.*; 16 U.S.C. § 1538.

Defendant filed an answer to Plaintiff’s complaint on November 17, 2017, admitting and denying certain of Plaintiff’s allegations. (Dkt. No. 15.) After successfully intervening, Intervenor-Defendants filed an answer to Plaintiff’s complaint on April 16, 2018, incorporating Defendant’s responses in its answer, and admitting and denying certain of Plaintiff’s allegations. (Dkt. No. 41.)

The Parties filed cross-motions for summary judgment in this case and appeared for oral argument on the motions on February 22, 2019. After the matter was deemed submitted, Defendant requested that the Court hold off on a ruling pending further settlement discussions. Those further settlement discussions were fruitful. The Parties submitted a Stipulation and Order Staying the Case, which this Court signed on March 26, 2019. (Dkt. No. 72.) The Order Staying the Case required that the Parties submit a joint status report every six months as the Parties work through their settlement commitments. The parties have done so, submitting their third post-stay joint status report on September 25, 2020. (Dkt. No. 77.)

The Order Staying the Case (Dkt. No. 72) anticipated that CDFW would undertake a rulemaking process for the new RAMP regulation and that “within 14 days after publication of the final rulemaking, the Parties will file a status report with the Court.” This fourth post-stay joint status report responds to that particular part of the Order Staying the Case, and is filed concurrently with the parties’ jointly submitted Second Stipulation and [Proposed] Order Staying the Case.

CURRENT STATUS

Since the stay was implemented, the California Department of Fish and Wildlife (CDFW) has made substantial progress toward its settlement obligations and has outlined those significant steps in the previous post-stay joint status reports.

Since the last joint status report, CDFW has undertaken the steps outlined below. Citations below refer to Exhibit A of this Court’s March 26, 2019 Order (Dkt. No. 72) so that the Court and all Parties can correlate CDFW’s actions with progress toward its settlement commitments.

Of importance, the update presented below is not cumulative. The update presented below covers activities undertaken by CDFW since the last update (Dkt. 77).

I. Risk Assessment Steps Undertaken Between September 26, 2020 and November 13, 2020

A. Exhibit A, Section I(c)(i)

CDFW performed entanglement risk assessments on November 4, 2020. This included two aerial surveys and communication with the Dungeness Crab Working Group. As a result of the risk assessment’s discovery of high concentrations of Humpback whales within the fishing grounds, and after input from the Working Group, the start of the crab season was delayed at least until December 1, 2020, for fishing zones south of the Sonoma/Mendocino county line.

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II. Rulemaking Steps Undertaken Between September 26, 2020 and November 13, 2020

A. Exhibit A, Section III(a)(iii)(2)

The RAMP regulations were submitted to the Office of Administrative Law (OAL) for review on September 2, 2020. OAL has approved the RAMP regulations with an effective date of November 1, 2020. The RAMP regulations are currently being implemented, including for the November 4, 2020 risk assessment.

III. No Objection to Filing Joint Status Report

CBD, PCFFA and IFR do not have direct knowledge of all of the actions outlined above, but have read this report and do not object to it being filed as a Joint Status Report.

Dated: November 13, 2020

Respectfully submitted,

/s/ Gary Alexander

Gary Alexander

Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

Attorney for Defendant Charlton H. Bonham

/s/ Catherine Kilduff

Catherine Kilduff

Kristen Monsell

Attorneys for Plaintiff

Center for Biological Diversity

/s/ Glen Spain

Glen Spain

Attorney for Intervenor Pacific Coast

Federation of Fishermen's Association and

Institute for Fisheries Resources

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ATTESTATION

I, Gary Alexander, am the ECF user whose identification and password are being used to file this Joint Status Report. In compliance with L.R. 5-1(i), I attest that the other signatories have concurred in this filing.

DATED: November 13, 2020

/s/ Gary Alexander

CERTIFICATE OF SERVICE

Case Name: *Center for Biological Diversity v. Charlton H. Bonham* Case No. **3:17-cv-05685-MMC**

I hereby certify that on November 13, 2020, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

FOURTH POST-STAY JOINT STATUS REPORT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 13, 2020, at San Francisco, California.

G. Guardado
Declarant

/s/ G. Guardado
Signature

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